

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

JOSEPHAT HENRY, resident of Harvey,	)	
KAY WILLIAMS, resident of Harvey,	)	
SYLVIA BROWNE, resident of Clifton Hill,	)	CIVIL NO. 1999/0036
MAUDE DREW, resident of Estate Barren Spot,	)	
MARTHA ACOSTA, resident of Estate Profit,	)	
JOSE BERRIOS, resident of Estate Profit,	)	
WILHELMINA GLASGOW, as an individual and as	)	
mother and next friend of SAMANTHA VIERA, a Minor,	)	
both residents of Estate LaReine,	)	
MERCEDES ROSA, resident of Estate Profit,	)	
JULIAN ST. BRICE, resident of Clifton Hill,	)	
GEORGE RODRIGUEZ, as an individual and as father	)	
and next friend of AMANDO and GEORGE E.	)	
RODRIGUEZ, Minors, all residents of Estate Profit,	)	
SONYA CIRILO, resident of Estate Profit,	)	
RAQUEL TAVAREZ, resident of Estate Profit,	)	
NEFTALI, as an individual and as father and next friend	)	
of ANGEL JAVIER CAMACHO, a Minor, both residents	)	
of Estate Profit,	)	
CHEDDIE KELSHALL, resident of Estate Profit,	)	
and other persons too numerous to mention,	)	
A CLASS ACTION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
ST. CROIX ALUMINA, LLC, ALCOA INC., and	)	
GLENCORE, LTD., f/k/a CLARENDON, LTD.,	)	
	)	
Defendants.	)	
	)	

**MOTION OF ALCOA INC., ST. CROIX ALUMINA, LLC AND GLENCORE LTD. FOR  
SUMMARY JUDGMENT BASED ON PLAINTIFFS'  
LACK OF NECESSARY EVIDENCE**

Defendants Alcoa Inc. ("Alcoa"), St. Croix Alumina, LLC ("SCA") and Glencore Ltd. ("Glencore") (collectively, "Defendants") hereby move for an order granting summary judgment on all claims asserted by each of the Plaintiffs based on the lack of necessary evidence in support

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thereof. This motion is made pursuant to Federal Rule of Civil Procedure 56 on the grounds that there is no triable issue of fact and that Defendants are entitled to judgment as a matter of law for the following reasons:

1. Each Plaintiff has failed to develop admissible expert evidence necessary to establish the causal link between any alleged emissions from the alumina refinery and his or her purported ailments or property damage. Each Plaintiff has also failed to develop admissible expert evidence necessary to exclude all other possible sources of exposure as potential causes of his or her alleged damages. Accordingly, without expert testimony regarding the dispositive element of causation, each Plaintiff is precluded from recovering damages on his or her claims for personal injury and property damages.

2. With regard to Plaintiffs' claims sounding in negligence and nuisance, no Plaintiff can establish that Defendants breached any duty whatsoever because each Plaintiff has failed to develop expert evidence establishing the relevant standards of care or that Defendants breached those standards with respect to each Plaintiff. Therefore, each Plaintiff's claims for negligence, public and private nuisance, negligent abatement, and negligent infliction of emotional distress must be dismissed.

3. There is no evidence whatsoever that the operation of the alumina refinery (including the sale and purchase of bauxite), by itself, created any risk of harm to any Plaintiff. Such an operation is not an "abnormally dangerous" activity that can give rise to strict liability.

4. Each Plaintiff's nuisance *per se* claim fails as a matter of law because the operation of an alumina refinery (including the sale and purchase of bauxite therefore) is a lawful enterprise, is not certain to cause injury, and is not proscribed by Virgin Islands case law or statutory law.

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5. Each Plaintiff's claim for intentional infliction of emotional distress likewise should be dismissed because there is no evidence sufficient to create a genuine issue of material fact on the issue of whether Defendants' conduct was so outrageous and extreme as to go beyond all bounds of decency. There is no evidence whatsoever that Defendants intentionally caused any Plaintiff's alleged emotional distress.

6. Each Plaintiff likewise cannot sustain his or her claim for negligent infliction of emotional distress because each Plaintiff has failed to adequately establish that he or she suffered any physical injuries resulting from his or her alleged emotional distress.

7. Finally, each Plaintiff's punitive damages claim fails as a matter of law because punitive damages are not independently actionable. Moreover, no Plaintiff has any evidence that Defendants acted maliciously or with wanton indifference to the rights of others, as is necessary to sustain his or her claim.

The grounds for summary judgment are set out more fully in the accompanying Memorandum of Law.

WHEREFORE, Defendants Alcoa, SCA and Glencore respectfully request that the Court enter summary judgment in their favor on each count based on each Plaintiff's lack of necessary evidence, and grant Defendants such other relief as the Court deems appropriate.

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Dated: May 22, 2009

Respectfully submitted,

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***Counsel for Defendants  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of May, 2009, I electronically filed the foregoing **Motion for Summary Judgment Based on Plaintiffs' Lack of Necessary Evidence** with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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